



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Judicial Review 40 of 2008

MUGO MUKERE APPLICANT

V E R S U S

**PROVINCIAL LAND APPEALS COMMITTEE
BOARD FOR EASTERN & ANOTHER RESPONDENT**

JUDGMENT

The Notice of Motion dated 22-8-07 was filed pursuant to leave granted by the court on 2/8/07.

The ex parte application has 2 prayers:-

1. That an order of certiorari be issued directed at/to the Provincial Land Appeals Board/Committee for Eastern Province Embu so as to quash its award of 1814/07 and adopted as judgment of the court regarding the parcel of land known as TITLE NO MBETI/GACHOKA/1555.
2. That an order of prohibition be issued directed at/to the Principal Magistrate's court Siakago prohibiting the court to cause to be executed, the Decree issued on 18/7/07 in respect of Land Dispute Tribunal No. 41 of 2006 regarding the parcel of land known as Title No. MBETI/GACHOKA/1555.

He also prays for costs of the application. The same is supported by the statement of facts and a supporting affidavit which were filed with the application for leave as prescribed by the rules.

I have perused the annexures and all the documents in support of this motion. I must agree with counsel for the interested parties that the applicant did not file a verifying affidavit as required under Order LIII Rule 1(2) of the Civil Procedure Rules. That would render the application defective.

In my view however, that is an issue that ought to have been addressed much earlier at the leave stage. I am disinclined to strike out this motion on such a technicality particularly given the length of time this matter has been pending before court.

That said, I now turn to the merits of the notice of motion in question. The main ground on which this notice of

motion is pegged is that the Provincial Lands Appeal Committee had no jurisdiction to entertain and determine a claim in respect of registered land. The property in question was Land Parcel No. MBETI/GACHOKA/1555 which is registered in the name of the ex parte applicant herein. A copy of the said Title Deed was annexed to the supporting affidavit. The said Title Deed was issued on 23/4/91. That fact is not disputed. Counsel for the interested parties in his submissions has not addressed that issue of jurisdiction or lack of the same on the part of the Appeals Committee. I believe he did not do so because he is well conversant with the issue and limitations of jurisdiction on the part of the Land Dispute Tribunal and the Appeals Committee.

The Provincial Appeals Committee adopted the Land Dispute Tribunal's decision to the effect that the land in question which was registered in the names of the applicant be shared by the interested parties.

This award therefore crossed the legal threshold and overstepped the jurisdiction of the Tribunal. It is trite law and I don't need to quote authorities or over emphasis this issue. The Land Disputes Tribunal and the Appeals Committee do not have jurisdiction to determine ownership rights over registered land. Sec 3 (a) of the Land Dispute Tribunal Act clearly and unambiguously defines the jurisdiction of the Tribunals. In this case therefore, in as far as it decided that the proprietary rights of the Ex parte applicant over the land in question could be interfered with, they overstepped or exceeded their jurisdiction. Any decision made by any Tribunal or court without jurisdiction is a nullity and cannot be enforced.

The decision challenged in this motion was therefore a nullity that calls for quashing. I need not say more. I have repeatedly said the same thing over and over again in all similar applications that have come before me. I nonetheless find it necessary to correct counsel for the interested party in his submission that this application was a nullity in law because it was filed outside the 60 days after the reading of the award. The 60 days only refer to an Appeal to the High Court. It has nothing to do with Judicial Review proceedings. Judicial Review proceedings can be filed within 6 months of the making of the impugned decision. The proceedings herein were therefore filed on time.

My ultimate finding therefore is that this motion has merit. I allow the same and grant prayers 1 and 2 of the same. The decision of the Provincial Appeals Board in respect of Title No. MBETI/GACHOKA/1555 and the subsequent judgment of the Principal Magistrate Siakago adopting the same are removed into this court and the same are hereby quashed.

I also order that each party bears its own costs of the motion reason being that the ex-parte applicants counsel filed a motion which strictly speaking failed to comply with the Rules and which as stated earlier would have been struck out had the court been moved at the appropriate time. He got the court's indulgence on that issue but he fails to get the costs.

W. KARANJA

JUDGE

Delivered, dated and signed at Embu this 7th day of June 2010.

In the presence of Mr. Ngigi for Mr. Kariuki & Mr. Ngare for Interested parties.

W. KARANJA

JUDGE